IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/09/2004

CORAM

THE HON'BLE MR.JUSTICE P.K. MISRA
AND
THE HON'BLE MR.JUSTICE A.K. RAJAN

WRIT APPEAL NO.2094 OF 2004 AND WRIT APPEAL NO.2691 OF 2004
and
W.A.M.Ps.No.3848 and 4973 OF 2004

The Management of
The Lakshmi Vilas Bank Limited
Administrative Office
Salem Road,
Kathaparai
KARUR-639006 .. Appellant in both the writ
appeals

-Vs-

1. The Deputy Commissioner of Labour,
Tiruchirapalli

2. G. Krishnamurthy .. Respondents in
W.A.No.2094/2004

1. G. Krishnamoorthy

2. The Deputy Commissioner of Labour,
Tiruchirapalli .. Respondents in
W.A.No.2691/2004

Writ Appeals filed Clause 15 of the Letters Patent against the
Order passed by the learned Single Judge of this Court in W.M.P.Nos. 5720 and
5721 of 2004 in W.P.No.22557 of 2003 dated 21.4.2004.

!For Appellant : Mr.A.L. Somayaji
Senior Counsel for
Mr.V. Karthick of
M/s T.S. Gopalan

^For respondents : Mr.N.G.R. Prasad
for M/s Row & Reddy
:COMMON JUDGMENT

P.K. MISRA,J.

The facts and circumstances leading to the present appeals may be stated in brief.
The second respondent in the Writ Appeal No.2094/2004 had joined the appellant bank as Sub-Staff in the year 1973 and in course of time, he was promoted and posted as Accountant at Srirangam Branch. In November, 1996, show cause notice was issued to him and ultimately, domestic enquiry was held by the bank and on the basis of the report of the Enquiry Officer dated 10.1.2000 the second respondent was discharged from service of the appellant bank. The departmental appeal, having been rejected, the second respondent preferred appeal under Sec.4 1(2) of the Tamil Nadu Shops and Establishments Act (hereinafter called the Act). The appellate authority, the first respondent in Writ Appeal No.2094 of 2004, allowed the appeal and set aside the order of discharge. Such order passed by the appellate authority under the Act has been challenged by the Bank in W.P.No.22557/2003. The second respondent, during pendency of such writ petition, filed two miscellaneous petitions. In W.P.M.P.No.5721/2004, the prayer was for a direction to the bank to reinstate the employee or in the alternative, pay the last drawn salary of Rs.16,650/- from the date of filing of the writ petition, till the disposal of the writ petition and in the other petition,i.e., W.P.M.P. No.5720/2004, the prayer was for a direction to the Management to pay back wages of Rs.5,82,750/- from the date of discharge i.e., 21.8.2000 till the date of filing of the writ petition. Both the miscellaneous petitions were disposed of on 21.4.20 04 by separate orders by the learned Single Judge after hearing the counsel for both the parties. In W.P.M.P.No.5720/2004, the learned Single Judge issued a direction directing the Management to deposit the back wages due to the present second respondent within a period of four weeks, permitting the individual concerned to withdraw the interest once in three months. In W.P.M.P.No.5721/2004, the learned Single Judge directed the Management to pay "Monthly salary to the petitioner at the rate of Rs.6,000/from the date of filing of writ petition till disposal".

2. W.A.No.2691/2004 is directed against the order in W.P.M.P.No.572 0/2004 and the connected W.A.No.2094/2004, is directed against the order in W.P.M.P.No.5721/2004. Since the same question of law is involved, both the appeals were heard together and shall be governed by the present common Judgement.

3. Mr.A.L. Somayaji, the learned Senior Counsel appearing for the Management, submitted that the writ petition was filed by the appellant against the order passed by the appellate authority under Sec.41(2) of the Tamil Nadu Shops and Establishments Act, hereinafter referred to as the Act, but the appellant has not prayed for any stay and since no stay has been prayed nor any stay has been granted, it is open to the concerned employee to enforce the order passed by the appellate authority under Sec.41(2) of the Act in the forum available and the present second respondent cannot utilise the writ petition filed by the Management as a means to secure the benefit of the order passed by the appellate authority under Sec.41(2)of the Act. He has further submitted that the provisions containing 17-B of the Industrial Disputes Act are not applicable to the proceedings under the Act.

Therefore, in the absence of any specific provision, the quondam employee has no right to get such order implemented in the writ petition filed on behalf of the Management. He also submitted that since the appellant bank is a private limited bank, even a writ of Mandamus cannot be issued against such bank to pay the salary of an employee in service and the second respondent cannot be in a higher position merely because the writ petition has been filed by the management challenging the order of the authority under Section 41(2) of the Act.

4. Mr.N.G.R. Prasad, the learned counsel appearing for the contesting respondent No.2, on the other hand submitted that the remedy under Article 226 of the Constitution of India, being discretionary remedy, the High Court is empowered to issue any interim order with a view to secure the ends of justice and even if there is no specific provision in the Act in line with Sec.17-B of the Industrial Dispute Act, the High Court is not powerless to issue any interim order during pendency of the writ petition. He has submitted that merely because the employee has chosen not to file a stay petition, that would not alter the position so far as the jurisdiction of the High Court is concerned and the High Court, during the pendency of the writ petition, can pass any interim order. He has further submitted that even in cases, where an employee is placed under suspension, during pendency of a disciplinary proceeding, such person is entitled to receive subsistence allowance, under the Rules and the position cannot be worse for an employee who has succeeded before the appellate authority contemplated under the Statute. He has further submitted that in the absence of any stay order, it is the duty of the appellant to reinstate the person and the appellant cannot take advantage of the fact that there is no specific provision for enforcement of the order of the appellate authority.

5. The question as to whether the order passed by the appellate authority under Sec.41(2) of the Act can be enforced against a private employer by issuing a writ of Mandamus does not crop up for decision in the present appeal, and therefore, we are not called upon to decide such matter.

6. In the present case, admittedly, the writ petition has been filed by the management questioning the order passed by the appellate authority under the Act. The learned senior counsel contended that had any stay petition have been filed by the writ petitioner, it would have been possible for the High Court, while considering the question of stay, to impose any reasonable condition as a condition-precedent for the stay. But in the absence of any specific prayer for stay by the writ petitioner, the second respondent could not have prayed for passing any order to implement the order of the appellate authority.

7. We are unable to appreciate such contention raised on behalf of the appellant. If such a contention is accepted, it would amount to the conclusion that if the Court finds sufficient reason for staying the order passed by the appellate au reby preventing the successful employee from rejoining the service any condition regarding payment of salary in part or in

full could have been imposed, but such employee would be in worse position merely because the employer in its technical wisdom does not seek for stay of the order of the appellate authority. The very fact that the employer does not seek for stay of the order passed by the appellate authority, even though he has challenged the order of the appellate authority, would rather mean that the employer has no objection for reinstatement of the person for the time being during pendency of the writ petition. The employer cannot circumvent the necessary and inevitable consequence of order of an appellate authority under Sec.41(2) of the Act, by not choosing to file a stay petition in the writ petition filed by him, and yet contend that he would neither reinstate the person nor pay any salary or any allowance even in the nature of subsistence allowance.

8. Law is well settled that a person who seeks equity must do equity. By filing a writ petition, obviously, the equitable jurisdiction of the High Court is being invoked. The petitioner cannot be heard to contend that even though there is statutory order passed by the appellate authority, setting aside the order of termination, and even though there is no order of stay, he will not obey such order, but will pursue the remedy of filing a writ petition. Such an attitude obviously indicates the intention of the petitioner to over reach the process of law.

9. The High Court, dealing with a matter Under Article 226 of the Constitution, admittedly exercises a Constitutional as well as equitable jurisdiction. While discharging such Constitutional obligations, the High Court is obliged to follow any statutory provision, but in the absence of any statutory prohibition, the High Court is not powerless to pass any order in consonance with principles of justice, equity and good conscience. It is no doubt true that there is no corresponding provision in the Act similar to Sec.17-B of the Industrial Disputes Act. However, in the absence of any specific provision and in the absence of any specific bar, the High Court is not powerless to pass any interim order in the interest of justice.

10. In W.P.M.P.No.9963/1984 arising out of W.P.NO.4115/1984, vide order dated 6th September, 1984 Justice Mohan, as his Lordship then was, while dealing with almost a similar application in a writ petition filed by the Management against the order under Sec.41(2) of the Act,in the absence of any stay petition by the Management, observed as follows:

" . . . Though the petition for direction has been taken out (by the respondent) in the writ petition filed by the petitioner, I am of the view that having regard to the expanded jurisdiction of this Court under Article 226 of the Constitution of India, it is not necessary for the petitioner in this petition (V.K. Ramamoorthy) to go by way of execution. This is for two reasons.(1) The execution takes a long time. (2) Even after execution, there are further proceedings by reason of which all the attempts to get reinstatement get frustrated. Therefore, it is not open to the writ petitioner to say that is the absence of be having obtained any stay, it will be open to the person concerned to execute the order".

On the aforesaid basis, in the said case, the employer was directed to

reinstate the employee or even otherwise to pay the salary to the employee and there was also direction for payment of back wages.

11. The learned counsel appearing for the second respondent has invited our attention to various similar orders passed in many matters such as in the order dated 17.4.1996 in W.P.M.P.Nos.1053, 3807 to 3809 /1996 in W.P.No.632/1996 reported in 2001(4)LLN 997 (AEROFLOT RUSSIAN INTERNATIONAL AIRLINES v. DEPUTY COMMISSION OF LABOUR (APPEALS) MADRAS AND ANOTHER), and order dated 16.9.1997 in W.P.M.P.NOs. 731, 18804 and 18805/1997. He has also invited attention to the order dated 12 .11.2003 in W.P.M.P.No. 31801/2003, which was confirmed with some modification by the Division Bench by Judgment dated 17.3.2004 in W.A. No.166/2004.

12. A Division Bench of Gujarat High Court in 1981 Labour Industrial Cases 1497, (Bipinchandra vs Navin Flusrine Industries), while considering somewhat similar question, observed as follows:

".... Be that as it may, we do not agree that the petitioner is not entitled to approach this Court by way of a petition of this nature. Indeed this course can more often be adopted with advantage when the demands of justice so enjoin so that parties are not driven from pillar to post and obliged to incur time cost and money cost which neither they nor the society can afford".

13. That the High Court has inherent power apart from the provisions contained in the Industrial Disputes Act, seems to be well recognised as evident from the decisions of the Supreme Court.

14. In 1986 (2) SCC 614 (Bharat Singh vs New Delhi tuberculosis Centre),while considering the question regarding applicability of newly amended provisions of Section 17-B of the Industrial Disputes Act in relation to disputes, which had arisen before the said date of amendment, the Supreme Court observed as follows:

"8. It is common knowledge that even before Section 17-B was enacted, courts were, in their discretion, awarding wages to workmen when they felt such a direction was necessary but that was only a discretionary remedy depending upon court to court. Instances are legion where workmen have been dragged by the employers in endless litigation with preliminary objections and other technical pleas to tire them out. A fight between a workman and his employer is oftentimes an unequal fight. The legislature was thus aware that because of the long pendency of disputes in tribunals and courts, on account of the dilatory tactics adopted by the employer, workmen had suffered. It is against this background that the introduction of this section has to be viewed and its effects considered.
(Emphasis added)

15. In (2001)5 SCC 169, (DENA BANK Vs. GHANSHYAM), the Supreme Court observed thus:

"10. It may be noticed that Section 17-B of the Act does not preclude the High Courts or this Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case,in the interests of justice. The High Court or this Court may, while entertaining the employer's challenge to the award, in its discretion, in appropriate cases, stay the operation of the award in its entirety or in regard to back wages only or in regard to reinstatement without interfering with payment of back wages or on payment of wages in future irrespective of the result of the proceedings before it etc. and/or impose such conditions as to be payment of the salary as on the date of the order or a part of the back wages and its withdrawal by the workman as it may deem fit in the interests of justice. The Court may, depending on the facts of a case, direct payment of full wages last drawn under Section 17-B of the Act only by the employer to the workman. The question whether a workman is entitled to the full wages last drawn or full salary which he would be entitled to in the event of reinstatement while the award is under challenge in the High Court or this Court depends upon the terms of the order passed by the Court, which has to be determined on interpretation of the order granting relief."
(Emphasis added)

16. In 1986(3) SCC 131, FAKIRBHAI FULABHAI SOLANKI Vs. PRESIDING OFFICER AND ANOTHER while considering the question of payment of subsistence allowance during pendency of dispute between the Management and the applicant, under Section 33(1) and 33(3) of the Industrial Dispute Act, the Supreme Court observed as follows:

". . . An unscrupulous management may by all possible means delay the proceedings so that the workman may be driven to accept its terms instead of defending himself in the proceedings under Section 33(3) of the Act. To expect an ordinary workman to wait for such a long time in these days is to expect something which is very unusual to happen. Denial of payment of at least a small amount by way of subsistence allowance would amount to gross unfairness".

17. The underlying principles in the above cases relating to various contingencies under the Industrial Disputes Act, support the contention of the learned counsel for the respondent that the Courts are not powerless to pass appropriate interim orders in the interest of justice.

18. In the background of the aforesaid principle, the contention of the learned senior counsel for the appellant that the second respondent has no right to claim any amount in the writ petition filed by the Management and he can enforce his right by approaching the Civil Court or even by initiating criminal proceedings as recognised under Sec.45 of Act, cannot be countenanced. To accept such a contention would encourage multiplicity of proceedings. This is against the well recognised principle that, Courts should always try to pass orders with a view to avoid multiplicity of proceedings and not encourage unnecessary litigation.

19. In view of the above, we have no doubt that in the writ

petition filed by the Management challenging the orders under Sec.41(2) of the Act, in the absence of any specific provision containing the Act similar to 17-B of the Industrial Dispute Act, the High Court is not powerless to issue appropriate interim direction regarding reinstatement or payment of salary or payment of the part of the salary obviously depending on the facts and circumstances of the particular case and such directions can be issued even though the Management has not sought for stay of the order of the appellate authority. In the above view of the matter, the main contention raised by the appellant is bound to fall.

20. The learned senior counsel has also submitted that there was no justification to direct the bank to deposit back wages and to permit the second respondent to withdraw quarterly interest and necessary direction regarding back wages can always be complied with after disposal of the writ petition. It is to be remembered that the present writ appeals are against the interim direction issued by the learned Single Judge and such order passed by the learned Single Judge is essentially discretionary order and ordinarily the appellate Court while deciding such appeal, should not interfere with the discretionary order passed by the learned Single Judge unless such order is shown to be unsupportable in law or unjust. (see AIR 1974 SC 1 719 (SHANTI KUMAR R. CHANJI v. THE HOUSE INSURANCE CO. OF NEW YORK).
21. Keeping in view the fact that the second respondent was receiving a salary of Rs.16,500/- at the time of his dismissal, the present direction by the learned Single Judge directing the payment of Rs.6 ,000/- per month and further directing the Management to deposit the back wages so that only the quarterly interest would be withdrawn by the second respondent cannot be characterised as illegal or unjust or arbitrary. In appeal, in the absence of any compelling reasons, we are not inclined to take a different view. Therefore, both the writ appeals are bound to be dismissed. The order should be complied with within a period of four weeks. Keeping in view the facts and circumstances of the case, we further direct that the writ petition itself may be listed for hearing before the appropriate Court at an early date, preferably within a period of six months. No costs. Consequently, the connected W.A.M.Ps are closed.

sr/dpk
Index:yes
Website:yes

To
The Deputy Commissioner of Labour,
Tiruchirapalli